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FISCAL IMPACT STATEMENT

LS 7159 | **NOTE PREPARED:** Feb 7, 2007
BILL NUMBER: HB 1388 | **BILL AMENDED:** Feb 1, 2007

SUBJECT: Film Industry Production Incentives.

FIRST AUTHOR: Rep. Denbo | **BILL STATUS:** 2nd Reading - 1st House
FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL | **IMPACT:** State
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) *Rebate for Media Production Expenses:* This bill authorizes a rebate for certain media production expenses incurred in Indiana. The bill appropriates money from the state General Fund to pay the rebates.

Sales Tax Exemption for Digital Media Productions: The bill expands the Sales Tax exemption for property acquired for use in a motion picture production to property acquired for use in digital media productions, audio recordings, music videos, and television and radio advertising. The bill also provides that a qualified applicant may not claim a rebate and a sales tax exemption for the purchase of the same tangible personal property.

Hoosier Business Investment Tax Credit: The bill expands the availability of the Hoosier Business Investment (HBI) Tax Credit for investments in motion picture and audio productions to investments in the production of digital media. The bill provides that for purposes of the Hoosier Business Investment Tax credit, the actors, performers, crew members, and other individuals employed in the making of a motion picture or audio production are considered full-time employees.

Effective Date: January 1, 2007 (retroactive).

Explanation of State Expenditures: *Summary of Administrative Expenditures:* This bill will increase expenditures for the Department of State Revenue (DOR) and the Indiana Economic Development Corporation (IEDC). The DOR will have to amend forms, adopt rules and procedures, and update computer software related to the Sales Tax exemption changes in this bill. The IEDC will incur additional expenses in: (1) reviewing more applications for the HBI Tax Credit; and (2) administering the new rebate for media production expenses established in the bill. It is estimated that both the DOR and IEDC can implement these provisions through the use of existing staff and resources.

(Revised) *Rebate for Media Production Expenses:* This bill establishes a rebate for certain media production expenses incurred by qualified applicants. This rebate is in the form of a payment from the IEDC for a percentage of the qualified expenses of a qualified applicant for a qualified production (see definitions in the *Background* section). These reimbursement payments will result in an indeterminable increase in expenditures from the state General Fund. The bill requires the amount necessary to pay these rebates to be appropriated to the IEDC. The amount of the increase in state General Fund expenditures will ultimately depend upon the number of applicants that qualify for the rebate, the amount of qualified productions expenditures made by the applicant on a qualified production, and the number of individuals employed by the applicant.

The bill sets forth a calculation for determining the amount of a qualified applicant's rebate for qualified expenditures. The formula provides that the qualified applicant gets a rebate on 25% of the qualified expenditures minus adjustments for less than the required percentage of Indiana purchasing and Indiana hiring in the qualified production. Indiana purchasing means the percentage of the purchases made in Indiana for the qualified production. Indiana hiring means the percentage of employees who worked on the qualified production who are Indiana residents. The bill requires the applicant's qualified expenditures be paid in full before receiving the maximum rebate. The bill also allows the IEDC to withhold up to 25% of the rebate until the expenditures are paid in full. Furthermore, an applicant may not receive a rebate under the bill for expenditures for which the applicant claimed the Sales Tax exemption also provided in this bill.

Under the bill, in order to receive the full 25% rebate, the average of the qualified applicants Indiana purchasing and hiring percentages must be: (1) 40% in 2007; (2) 50% in 2008; and (3) 60% in 2009.

Background: As defined in the bill: "Qualified applicant" means a limited liability company that is: (1) domiciled in Indiana; and (2) engaged in the business of making qualified productions in Indiana.

"Qualified production" refers to the following:

(1) Any of the following that is produced for any combination of theatrical or television viewing or as a television pilot:

(A) A feature length film, including a short feature, an independent or studio production, or a documentary.

(B) A television series, program, or feature.

(2) A digital media production that is intended for reasonable commercial exploitation.

(3) An audio recording or a music video.

(4) An advertising message broadcast on radio or television.

The term includes preproduction, production, and postproduction work. The term does not include a production in any medium that is obscene.

(Revised) "Qualified production expenditure" means any of the following expenses incurred in Indiana or expenditures in Indiana made in the direct production of a qualified production in Indiana:

(1) The payment of wages, salaries, and benefits to Indiana residents.

(2) Acquisition costs for a story or scenario used in the qualified production.

(3) Acquisition costs for locations, sets, wardrobes, and accessories.

(4) Expenditures for materials used to make sets, wardrobes, and accessories.

(5) Expenditures for photography, sound synchronization, lighting, and related services.

(6) Expenditures for editing and related services.
(7) Facility and equipment rentals.
(8) Food and lodging.
(9) Airfare if the tickets are purchased through an Indiana based travel agency.
(10) Insurance coverage if purchased through an Indiana based insurance agent.
(11) Legal services if purchased from an attorney licensed to practice law in Indiana.
(12) Any other expenditure recognized as a direct cost of production in accordance with generally accepted entertainment industry practices.

Explanation of State Revenues: (Revised) *Sales Tax Exemption for Digital Media Productions:* This bill will decrease Sales Tax collections by between $410,000 and $530,000 in CY 2007, and between $420,000 and $540,000 in CY 2008. The expanded exemption in this bill has a retroactive effective date to January 1, 2007, and current statute limits the exemption to purchases taking place before January 1, 2009.

The bill expands the exemption by defining more types of production purchases that qualify for the Sales Tax exemption. The new definition of purchases qualifying for the exemption, which is the same as the definition for the rebate established by this bill, include production purchases for digital media production, audio recording or music video, and advertising for radio or television. The bill does not allow an exemption when the transaction involves a qualified production expenditure as defined in the bill in IC 5-28-22-0.8.

Hoosier Business Investment (HBI) Tax Credit: The bill extends the HBI Tax Credit to include qualified investment in machinery, equipment, or special purpose buildings used to make digital media productions. Credits for such purchases and investment could potentially be approved beginning in 2007. These changes could expand the pool of potential applicants for the credit and result in an indeterminable reduction in Adjusted Gross Income (AGI) Tax, Financial Institutions Tax, and Insurance Premiums Tax revenue.

Background on HBI Tax Credit: Under current statute, the IEDC Board is authorized to award the nonrefundable HBI Tax Credit for expenditures on qualified investment determined to foster job creation and higher wages in Indiana. The maximum credit that the IEDC may award is 10% of the qualified investment. A taxpayer may claim the credit against the Adjusted Gross Income (AGI) Tax, Insurance Premiums Tax, or Financial Institutions Tax liability. (Note: The maximum allowable credit was 30% of qualified investment if approved before May 15, 2005. However, these credits may be claimed only against the growth in the taxpayer's tax liability over a specified base year tax liability.) The IEDC is currently authorized to award the HBI Tax Credit for qualified investment made before January 1, 2012. (Note: The expiration date was extended from December 31, 2007, to December 31, 2011, under P. L. 137-2006.) The credit is nonrefundable and may not be carried back. Unused tax credits may be carried over for up to nine years after the year in which the investment is made, unless a shorter carryover period is stipulated by the IEDC Board.

Approximately $331.7 M in new credits under the 30% credit program was awarded in 2004, the first year the HBI Tax Credit. In 2005, approximately $137.8 M in new credits was awarded under the 30% credit program, and approximately $15.0 M in new credits was awarded under the current 10% credit program. Also, in 2005, the IEDC certified approximately $55.3 M in credits already awarded under the 30% credit program, signifying that the taxpayer had made the agreed upon qualified investment and could claim the certified amount of credits against the taxpayer's tax liability growth. No credits awarded under the 10% credit program were certified in 2005.

Revenue from the AGI Tax on corporations, the Financial Institutions Tax, and the Insurance Premiums Tax is distributed to the state General Fund. Eighty-six percent of the revenue from the AGI Tax on individuals is deposited in the state General Fund, and 14% of the revenue is deposited in the Property Tax Replacement Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of State Revenue; Indiana Economic Development Corporation.

Local Agencies Affected:

Information Sources:

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